DOCUMENT RESUME

ED 403 717 EC 305 282

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TITLE Due Process Hearings: An Update. Final Report.
INSTITUTION National Association of State Directors of Special Education, Alexandria, VA.
SPONS AGENCY Special Education Programs (ED/OSERS), Washington, DC.
PUB DATE 8 Jan 97
CONTRACT HS92015001
NOTE 31p.; For earlier study, see ED 378 714.
PUB TYPE Reports - Evaluative/Feasibility (142)

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS *Conflict Resolution; *Disabilities; *Due Process; Educational Policy; Elementary Secondary Education; *Hearings; National Surveys; Research Needs; State School District Relationship; State Standards; *Trend Analysis

ABSTRACT

This report presents data from all 50 states on due process hearings concerning the education of students with disabilities for the years 1992, 1993, and 1994. Data were gathered from a 1996 survey conducted by the National Association of State Directors of Special Education. This survey updates due process statistics from a 1994 survey that obtained data from 1991, 1992, and 1993. Analysis of results took into account the differences in record-keeping "years" among states; whether the state had a "two-tier" (local and state level hearings) or "one-tier" (state level hearings only) due process system; and the number of hearings requested and held. The following findings are reported: requests for hearings grew at an average rate of 7.5 percent from 1991 to 1995 (but only 3.3 percent for the final year of that period); numbers of hearings held grew at an average rate of 16.5 percent from 1991 to 1995; and many states are investigating alternative methods of dispute resolution, particularly mediation. The report concludes that data to assess current due process systems and procedures are seriously lacking, and that an acute need exists for research in dispute resolution at the state and federal levels. Appendices provide examples of one-tier and two-tier due process systems (from Massachusetts and Alaska), the survey itself, and a tabular presentation of survey data by state. (DB)

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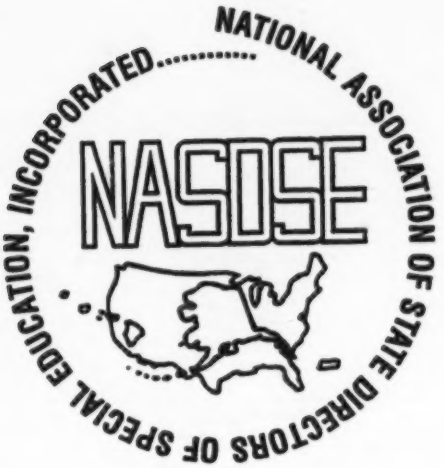
ED 403 717

DUE PROCESS HEARINGS: AN UPDATE

by Eileen M. Ahearn, Ph.D.



Final Report
Year 4 Deliverable #7-4-6
Under Contract No. HS92015001
January 8, 1997

Prepared for:
Office of Special Education Programs
U. S. Department of Education

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EC305282

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Project FORUM at National Association of State Directors of Special Education (NASDSE) is a contract funded by the Office of Special Education Programs of the U. S. Department of Education. The project carries out a variety of activities that provide information needed for program improvement, and promote the utilization of research data and other information for improving outcomes for students with disabilities. The project also provides technical assistance and information on emerging issues, and convenes small work groups to gather expert input, obtain feedback, and develop conceptual frameworks related to critical topics in special education.

This report was supported in whole or in part by the U.S. Department of Education (Contract No. HS92015001). However, the opinions expressed herein do not necessarily reflect the position or policy of the U.S. Department of Education, and no official endorsement by the Department should be inferred.

ACKNOWLEDGMENTS

Project FORUM extends its sincere appreciation to the individuals whose efforts have served to enrich the quality and accuracy of this document. The individuals listed below, who acted as a communication panel for this activity, provided the data on which this report is based. Our acknowledgment of their involvement does not necessarily indicate their endorsement of this final document.

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ABSTRACT

This report contains data on due process hearings in all 50 states for the years 1992, 1993, and 1994, updating similar statistics for the three prior years that were included in a previous FORUM report (*Mediation and Due Process Procedures in Special Education: An Analysis of State Policies, 1994*). After a brief background section, the data are summarized, analyzed, and compared to earlier data to determine trends. The data reported were gathered through a 1996 survey conducted by the National Association of State Directors of Special Education. The report concludes that data to assess current due process systems and procedures is seriously lacking, and that there is an acute need for research at both the federal and state level in the area of dispute resolution.

DUE PROCESS HEARINGS: AN UPDATE

INTRODUCTION

The major component of the procedural safeguards contained in the federal special education law, P.L. 94-142, now known as the Individuals With Disabilities Education Act (IDEA), is the due process hearing. At present, there is no federal requirement for the regular compilation of national-level data on the implementation and outcomes of due process procedures in the states. Therefore, there are few sources for current information about the number of hearings requested or convened to settle special education disputes.

In September 1994, Project FORUM published a report on mediation that included a section on due process hearings data from all the states for the years 1991, 1992, and 1993. At the request of the U. S. Department of Education, Office of Special Education Programs (OSEP), Project FORUM prepared this report that updates due process statistics for the years 1994, 1995 and 1996 using survey data collected by the National Association of State Directors of Special Education (NASDSE) in June, 1996. After a short background on the topic, this report focuses on the results of that survey. The responses are provided along with a brief analysis of the data.

BACKGROUND

Laws and Regulations

Requirements for designing and conducting due process hearings in special education are prescribed in many types of documents at both federal and state levels. Federal law requirements are specified in the IDEA statute [20 U.S.C. Chapter 33], and the *Regulations Implementing the IDEA Part B* [34 *CFR* 300]. Due process provisions of IDEA Regulations are in §300.500-586, Subpart E - Procedural Safeguards. Regulations implementing Section 504 of the Rehabilitation Act of 1973 also provide federal due process protections for what that law refers to as "handicapped " persons. Each state has also passed laws, adopted regulations and, in many cases, developed guidelines and policies relating to due process procedures for students with disabilities.

State Structures

Despite differences in various components of the procedures, due process is enacted in a similar manner across the country. The only major difference among states is in the structure used by a state for its due process system. In a *two-tier system*, a hearing takes place first at the school or district level, with the right of appeal to a state-level hearing officer or panel; in a *one-tier system*, the hearing is initiated at the state level with no formal hearing procedure at lower levels. Appendix A contains extracts from the special education requirements of Massachusetts as an example of a one-tier system, and Alaska as a two-tier approach. This difference is further discussed below.

Method

In June, 1996, NASDSE mailed a survey form to the Director of Special Education in the 50 states requesting data on special education hearings. (See Appendix B for a copy of the survey form.) Responses were received from all fifty states and the results were tabulated and analyzed. The total data submitted for this survey are included in tabular form as Appendix C.

It is *important to note* that the numbers reported for the year 1996 are incomplete in most instances. The data was requested in June, 1996 and, because of the variation in "years" used by states (explained below), the record-keeping year of 1996 was either just completed or not yet over.

SURVEY RESULTS

Record Keeping "Years"

The data analyzed here were gathered using the same approach as the original set of data for the previous report. The purpose of the data collection was to allow for a general comparison of trends over years, with the clear understanding that the specific months covered in the states for each "year" might be different. Respondents were asked to explain what was covered by a "year," indicating the specific time period they normally use to compile their data. This instruction was given to avoid imposing on state personnel the burden of re-figuring their data to isolate statistics for a period of time that might be different from that used by the state.

The findings for record keeping periods, summarized in Table 1, indicate the significant variation among states on this point. Record keeping years reported by the states covered the following periods:

A) *Calendar year* covering 1/1 through 12/31 of a year;
B) *Federal fiscal year* covering 10/1 through 9/30 of the following year;
C) *Traditional fiscal year* covering 7/1 through 6/30 of the following year; and,
D) *Other* fiscal year periods:
    a) 8/1 through 7/31 of the following year; and,
    b) 9/1 through 8/31 of the following year.

Table 1: State Record Keeping Years

Fiscal Year	States
Calendar Fiscal Year (N=20)	AL, CT, FL, IL, IN, ME, MD, MT, NE, NH, ND, OR, RI, SC, TN, UT, VT, WA, WI, WY
Federal Fiscal Year (N=1)	NY
Traditional Fiscal Year (N=25)	AK, AZ, AR, CA, CO, DE, GA, ID, IA, KS, KY, LA, MA, MI, MN, MS, MO, NV, NJ, NM, NC, OK, PA, VA, WV
Other:	
a) 8/31-7/31 (N=2)	HI, OH
b) 9/1-8/31 (N=2)	SD, TX

Given the variation in reporting periods, precise comparison by year of state statistics using data gathered in this survey is not possible. Data would have to be converted to a consistent time period to allow for an accurate comparison by year. In addition, some states have changed the period used as their reporting period during the time covered in the survey. For example, Arkansas converted their fiscal year from a calendar year for 1993-94, to the traditional 7/1-6/30 fiscal year for 1995-96.[1] The

[1]It should be noted that the data for Arkansas for "fiscal year 1994-95" covered only the six months transition period from 1/1 to 6/30.

analysis of differences by year presented later in this report (as well as that conducted for the previous report on this topic) traces trends with the understanding that each state's "year" may cover a different set of months.

Tiers

As explained above, state due process systems differ in structure. In *two-tier* states, a hearing originates at the school or district level and, if not settled, moves to the state level for appeal and then to court for any subsequent appeal. In a *one-tier* state, a hearing is held by the state and, if the findings are rejected, appeal is to the court. As Table 2 summarizes, 28 states now have a one-tier system, and 22 use two tiers.

Table 2: State System Structures

Type	States
One-Tier (N=28)	AL, AR, CA, CT, DE, FL, GA, HI, ID, IA, ME, MD, MA, MS, MT, NE, NV, NH, NJ, ND, OR, SD, TN, TX, VT, WV, WI, WY
Two-Tier (N=22)	AK, AZ, CO, IL, IN, KS, KY, LA, MI, MN, MO, NM, NY, NC, OH, OK, PA, RI, SC, UT, VA, WA

There are advantages and disadvantages to each structure. A two-tier system uses the school and/or district as the locus for a hearing, presuming that it is more effective to try to settle a dispute at the level closest to the differing parties. It is claimed that this procedure makes due process more informal and lessens the involvement of state-level personnel who may be perceived as "outsiders" to the dispute. However, experience over time in many states has revealed that the two tier system can be less effective. Appeal of a dispute to the state level usually involves a complete repetition of the lower level process, resulting in more delay in settlement than would have been the case if the appeal were heard just once. In addition, for those cases that are further appealed to the state and/or federal court system, the extra time involved in a two-tier system makes the delay even greater. The trend in recent years has been to move from a two-tier to a one-tier approach; Georgia, Maryland, Oregon and Wisconsin have all made this change in the last few years. [2] No conversions have been made in the opposite direction.

[2]The 1994 report listed Hawaii as a two-tier state However, Hawaii is a single-system state and, although there was an appeal process involving another agency of the state, a recent revision clarifies the system as having only one tier.

Number of Hearings Requested and Held

As explained above, the numbers reported for each year do not cover the exact same months for every state because of differences in record keeping periods. The purpose of this analysis is to examine trends over a period of years rather than make exact comparisons year by year. It should also be noted that some states did not provide data for some items on the survey. States that did not supply data for an element were excluded from any comparisons that included that element.

In order to trace trends in due process hearings, data from the previous survey (years 1991, 1992, and 1993) were compared with data from the recent survey for the years 1994 and 1995.[3] Analysis reveals a steady increase over the five years from 1991 to 1995 in both the number of hearings requested, and the percentage of requests resulting in a convened hearing. On average, 34.8% of the hearings requested actually result in a hearing being held. This data is summarized in Table 3.

Table 3: Hearings Requested and Held 1991 to 1995

Year	Hearings Requested	Number Held	Percent Held
1991	4,125	1,232	29.9%
1992	4,323	1,336	30.9%
1993	4,781	1,627	34.0%
1994	5,321	1,921	36.1%
1995	5,497	2,263	41.2%
Total	24,047	8,379	34.8%

Although requests for hearings increased steadily from 1991 to 1995, the rate of growth reversed in 1995 in both actual numbers and percentage. The mean increase for hearing requests was 343 or 7.5 percent per year over the five year period, but the increase for 1994-95 was only 176 which was only 3.3 percent over the previous year. A summary

[3]Because the survey data for 1996 was incomplete for most states, it was not used in any of the analyses.

of data showing the increase in numbers of *hearings requested* and the pattern in states is summarized in Table 4.

Table 4: Hearing Requests Pattern 1991-95

Year	Growth Over Prior Year	Percent of Increase	Number of States Increased	Number of States Decreased	Number of States the Same	No Data
1992	198	4.8%	29 states	16 states	0 states	5 states
1993	458	10.6%	24 states	22 states	0 states	4 states
1994	540	11.3%	36 states	5 states	4 states	5 states
1995	176	3.3%	27 states	18 states	2 states	3 states
Average	343	7.5%	29 states	15 states	1.5 states	4 states

As Table 5 shows, the findings for *hearings that were actually convened* follow a somewhat similar trend as that for hearings requested, but there was no reversal in the upward trend for hearings held in 1994-95 as there was for requests. The actual number of hearings held in the year 1995 increased at almost the same rate as the previous year. Although there is a decrease in percentage for hearings held in 1994-95 over the previous year, it is not as dramatic as the decrease in the number of hearings requested. The percent of increase each year for hearings held was higher throughout this period than the increase in requests, and the percentage decrease for hearings held from 1994 to 1995 was negligible.

Table 5: Pattern of Hearings Held

Year	Growth Over Prior Year	Percent of Increase	Number of States Increased	Number of States Decreased	Number of States the Same	No Data
1992	104	8.4%	20 states	16 states	10 states	4 states
1993	291	21.8%	25 states	22 states	1 states	2 states
1994	294	18.1%	25 states	20 states	3 states	2 states
1995	342	17.8%	23 states	21 states	5 states	1 states
Average	258	16.5%	23 states	20 states	5 states	2 states

A review of the survey results for hearings requested and hearings held in each state reveals some important reductions that contributed to the national trends previously discussed:

- Eight states had a reduction of 25 percent or more in the number of hearings requested for 1995 over 1994. They are Arkansas, Colorado, Hawaii, Idaho, Illinois, Kentucky, Maine, and Maryland.

- Five of those states—Arkansas, Colorado, Idaho, Illinois, and Maine—also had a significant reduction in hearings held from 1994 to 1995.

- Ten states reduced the number of hearings held in 1995 more than 25 percent over 1994, even though their number of requests were not reduced at all, or went down less than 25 percent. They are Georgia, Indiana, Massachusetts, Michigan, Minnesota, Mississippi, North Carolina, Oregon, Tennessee, and Washington.

SUMMARY AND DISCUSSION

Some observations are valid within the conditions used in this analysis. It can be said that requests for hearings grew at a moderate average rate of 7.5 percent from 1991 to 1995, but the growth rate was only at 3.3 percent for the final year of that period (1995). In contrast, the number of hearings held grew at a higher average rate of 16.5 percent for the years 1991 to 1995, with only a slight decrease from 1994 to 1995. For both of these aspects, increases from 1991 to 1992 were significantly lower than any subsequent year.

Many states have recently invested time and resources in alternative methods of dispute resolution, particularly mediation.[4] It is reasonable to assume that such actions could have reduced the number of requests for a formal due process hearing. In addition, there are many other factors that could have influenced the fluctuation discussed in this report, including revisions in data collection and procedures. However, there is no data available that addresses this matter.

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[4]Project FORUM has recently issued a document on this topic entitled *Mediation and Other Alternative Dispute Resolution Procedures in Special Education*. It is available from NASDSE at the address on the cover of this report.

There is an acute need for research in the area of dispute resolution. Given the rapidly escalating costs of due process procedures including the additional financial burden on districts that must reimburse parents for their attorney's fees, states and districts are anxious to increase their use of less litigious means for settling disputes between parents and schools. In addition, although the general structure of due process systems is similar from state to state, there are some differences that may influence the volume of requests or the escalation of differences into formal disputes. However, the lack of national level research on this topic makes it impossible to assess the impact of particular structural or procedural strategies, thus complicating policy development and revision. It is strongly recommended that an investment be made in research on this topic at the federal and state level to meet this critical need.

APPENDIX A: Examples of One-Tier and Two-Tier Systems

Note: The following material was extracted from the documents of Massachusetts and Alaska that are contained in the *State Policy Database* (SPD), a full text searchable database, developed at the National Association of State Directors of Special Education through the use of federal funds under Project FORUM. The SPD was designed to include the Part B State Plan, special education regulations and special education statutes for every state and jurisdiction of the United States. Currently, the SPD contains one or more documents from 45 states and the District of Columbia. The SPD also contains federal laws and regulations that pertain to students with disabilities. The federal documents currently incorporated in the database are the text of the Individuals With Disabilities Education Act (IDEA), the regulations for IDEA Parts B and H, the Comments issued with those two sets of regulations, and the regulations that pertain to elementary and secondary education that were issued for Section 504 of the Rehabilitation Act of 1973.

ALASKA - STATE EDUCATION LAWS

> Sec. 14.30.193 School District Hearings
> (a) If a parent refuses to consent, or does not respond within 30 days to the school district's request for consent, under AS 14.30.191(a) or 14.30.285(f), the school district may appoint an impartial hearing officer to conduct a hearing to determine whether the school district may initiate the evaluation or placement of the child, or transfer the child.
> (b) If a parent disagrees with the school district's intended placement of a child or a program for a child, the parent may request a hearing. If a hearing is requested under this subsection, the school district shall appoint an impartial hearing officer to conduct the hearing.
> (c) A hearing officer may not be appointed under this section unless approved in writing by the parent; however, parent approval of a hearing officer is not required if the parent has been offered and has rejected three different hearing officers. After a hearing officer is appointed under this section, the hearing officer shall conduct an informal prehearing settlement conference and attempt to resolve the disagreement between the parent and the school district. If, after a hearing under this section, the hearing officer determines that the school district's intended action is in accordance with law and is in the child's best interest, the hearing officer shall approve that action.
> (d) If a parent participates in the hearing but refuses to comply with the decision of the hearing officer, the district shall document in the hearing record the district's attempt to evaluate, place, or transfer the child.
> (e) If a parent does not participate in the hearing, the district shall document in the hearing record the district's attempt to evaluate, place or transfer the child and the parent's lack of participation in evaluation, placement, or transfer.

> (f) A hearing officer's decision under this section is final and binding on the school district and parent, unless appealed under (g) of this section. Notwithstanding a decision by the hearing officer, a child may not be evaluated, placed, transferred, or compelled to receive special education or related services from the school district until the period for filing an appeal under (g) of this section has expired or, if an appeal is filed, until the department and court appellate review process has been completed.
> (g) A parent or a school district may appeal a hearing officer's decision under this section to the department by requesting an appeal hearing under AS 14.30.195. The appeal hearing request must be in writing and must be received by the department within 30 days after receipt of the hearing officer's decision.
> (h) The department shall maintain a list of qualified hearing officers. The department shall qualify hearing officers through a training program that shall be open to all residents of the state. A hearing officer may be qualified for a period not to exceed five years. The list of qualified hearing officers shall be maintained as a public record.
> HISTORY
> (Sec. 8 ch 77 SLA 1993)
> EFFECTIVE DATE NOTES
Section 26, ch. 77, SLA 1993 makes this section effective June 30, 1993.
>
> Sec. 14.30.195 Hearings
> (a) The department shall, by regulation, provide for administrative appeal hearings, based on the record, of impartial hearing officers' decisions under AS 14.30.193. An administrative appeal hearing shall comply with all requirements necessary for participation in federal grant-in-aid programs, including 20 U.S.C. 1400 - 1485 (Individuals with Disabilities Education Act).
> (b) The agency conducting a hearing under this section may issue subpoenas under AS 44.62.430 and may petition the superior court for adjudications of contempt under AS 44.62.590.
> (c) After an appeal hearing under this section, the department shall render its decision affirming, reversing, modifying, or remanding the hearing officer's decision under AS 14.30.193.
> (d) A parent or the school district may appeal to the appropriate court for review of the department's decision on appeal under (c) of this section.
> (e) A parent who appeals to the court and who is determined by the court to be an indigent person may be provided with a court appointed attorney at public expense. In this subsection, "indigent person" has the meaning given in AS 18.85.170.
>
>

MASSACHUSETTS - REGULATIONS - SP.ED.

Chapter 4 - Appeal Procedures

> 400.0 Bureau of Special Education Appeals: Disputes over provision of special education; notice to Bureau.

> In order to provide for resolution of differences of opinion regarding the identification, evaluation, placement, proposed educational placement, or the provision of a free appropriate public education to special needs children, the Bureau of Special Education Appeals (the Bureau) of the Department of Education shall conduct mediations and hearings to resolve such disputes at the request of parents and school committees.

> Hearings and mediations shall be conducted by impartial hearing officers and mediators employed by the Department of Education solely to conduct those proceedings. Bureau mediators and hearing officers shall not be individuals involved in the care or education of the children who are the subject of the Bureau hearings or mediations, and shall not have personal or professional interests which would conflict with their objectivity in the hearing or mediation.

> 400.1 No later than five (5) days after receipt of a request for a hearing or notice that an IEP or finding of no special needs has been rejected by the parent, the school committee shall send a copy of such notice to the Bureau. The Bureau shall then give notice in writing to the parties of the rights of the parents and school committee to request a hearing and explaining the availability of mediation as a voluntary dispute resolution procedure. The Bureau must also send to the parents a list of free or low cost attorneys and advocates available to assist parents with special education hearings.

> 401.0 Bureau of Special Education Appeals: Mediation procedures.

> Parents and school committees may voluntarily agree to seek resolution of their dispute through mediation. Within thirty (30) days of receipt of a request for mediation, the mediator will schedule a mediation session at a time and place convenient to the parties. The mediation shall include the parents and any representative of the parents' choosing and representative of the school committee, with one representative who is authorized to resolve the dispute on behalf of the school committee. The Bureau mediator will assist the parties in working toward an agreement, clarifying the matters in dispute, and understanding their respective rights and obligations under these regulations. When the parties reach agreement, it will be set forth in a written mediation agreement. If no agreement is reached, the parents or school committee may request a hearing.

>
> All discussions which occur during mediation are confidential and may not be used as evidence in a hearing. Parents and school committees may request a hearing without participating in mediation.
>
> 402.0 Appeal to the Bureau of Special Education Appeals: Request for hearing; rights of parents and schools; notice to parties.
>
> A parent or a school committee may request a hearing at any time by sending a written request to the Bureau. A parent or school committee, except as provided in 402.1, may initiate a hearing on any matter concerning the identification, evaluation, placement, proposed IEP, portion of the proposed IEP, manner of implementation of an accepted IEP, provision of a free appropriate public education, or procedural protections of state and federal law. A parent of a handicapped student may request a hearing on any issue involving the denial of the free appropriate public education guaranteed by Section 504 of the Rehabilitation Act of 1973, as set forth in 34 CFR 104.31-104.39.
>
> A parent, however, need not request a hearing to resolve issues of non-compliance, but may report such issues of non-compliance to the Department of Education, using the compliant management procedures under 215.0 of these regulations. Use of the Department's complaint management procedures does not prevent a parent from requesting a mediation or a hearing on those issues.
>
> 402.1 A school committee may not request a hearing on a parent's failure to consent to initial evaluation or initial placement of a child in a special education program. The school committee's right to request a hearing on matters relating to independent evaluations is limited to the circumstances described in 328.3 and 328.5.
>
> 402.2 The hearing request shall include the name and address of the child, the child's parent, guardian, or educational advocate, the school committee, and advocates or legal representative, if any. The request shall be dated, and signed by the requesting party, and shall contain a brief statement describing the disputed matter for which a hearing is being sought.
>
> 402.3 No later than five (5) days after receipt of a request for a hearing, the Bureau shall schedule the hearing to be held within twenty (20) days after the receipt of the hearing request, and shall assign a hearing officer to conduct the hearing. The Bureau shall notify the parties in writing of the date of the hearing and of the hearing officer assigned to hear the appeal. The hearing shall be held at the Department of Education or other location accessible to the parties, at a time determined by the hearing officer to be mutually convenient.
>
> 402.4 In addition to the notice described in 400.1, upon receipt of

a hearing request the Bureau shall send to the parties a notice describing the rights and obligations of the parties, as set forth in 403.0 of these regulations. The Bureau shall also send to the parents a list of free or low cost attorneys and advocates available to assist parents in connection with special education hearings.

>

> 403.0 Bureau of Special Education Appeals: Hearings; rights and obligations of the parties.

>

> Hearings before the Bureau pursuant to the IDEA, M.G.L. c.71B, and or Section 504 of the Rehabilitation Act of 1973, shall be governed by these regulations, the regulations under the IDEA, as set forth in 34 CFR 300.1 et seq M.G.L. c.30A, as set forth in 801 CMR 1.00 et seq.

>

> 403.1 The following rights are accorded to the parties under the provisions governing Bureau proceedings:

>

> 403.1(a) The right to be accompanied and advised by advocates, counsel, and individuals with special knowledge or training with respect to the issues of children with special needs.

>

> 403.1(b) The right to present evidence, to confront, cross-examine, and, pursuant to a subpoena issued by the Bureau, to compel the attendance of witnesses.

>

> 403.1(c) The right to prohibit the introduction of any evidence at the hearing that has not been disclosed to the parties at least five (5) days before the hearing.

>

> 403.1(d) The right to obtain an electronic verbatim record of the hearing upon written request to the Bureau after the close of the hearing. The record may only be used in a manner consistent with these regulations and otherwise shall be kept confidential except with the consent of the parent.

>

> 403.1(e) The right to receive a written decision setting forth the hearing officer's findings of fact and order, within forty-five (45) days of the receipt of a request for a hearing, provided that the hearing officer may grant specific extensions of time at the request of either party.

>

403.1(f) The right to receive, upon request to the Bureau, a list of its impartial hearing officers with their qualifications.

>

> 403.2 The following rights are accorded to parents under the provisions governing Bureau proceedings:

>

> 403.2(a) The right to have the child who is the subject of the hearing present at the hearing.

>

> 403.2(b) The right to open the hearing to the public, otherwise the hearing shall not be open to the public.
>
> 403.2(c) The right, pursuant to the Massachusetts Student Records Regulations, to inspect and to receive a copy of all student records pertaining to the child, including, but not limited to, the written record and clinical history of the evaluation, and any other school records and papers related to the identification, evaluation, placement or provision of a free appropriate public education to the child.
>
> 403.2(d) The right to introduce an independent evaluation as evidence in the hearing, whether the independent evaluation was conducted at parental or school committee expense.
>
> 403.2(e) The right to receive reasonable attorney's fees, if the parents prevail in the proceedings.
>
> 404.0 Bureau of Special Education Appeals: Hearing officers' powers and duties.
>
> The Bureau hearing officer shall have the power and the duty to conduct a fair hearing; to ensure that the rights of all parties are protected; to define issues; to receive and consider all relevant and reliable evidence; to ensure an orderly presentation of the evidence and issues; to ensure a record is made of the proceedings; to reach a fair, independent, and impartial decision based in the issues and evidence presented at the hearing and in accordance with applicable law.
>
> 404.1 In furtherance of these duties the hearing officer has the power to:
>
> 404.1(a) Administer the oath of affirmation to anyone who will testify at the hearing;
>
> 404.1(b) Assist all those present in making a full and free statement of the facts;
>
> 404.1(c) Ensure that all parties have a full opportunity to present all their claims orally, or in writing, and to secure witnesses and evidence through issuance of subpoenas to establish their claims;
>
> 404.1(d) Receive, rule on, exclude or limit evidence;
>
> 404.1(e) Schedule a mutually convenient date, time, and place for the hearing consistent with the rights of the parties under these regulations;
>
> 404.1(f) Rule on requests or motions that may be made during

the course of the hearing;

404.1(g) Hold prehearing conferences for the purpose of clarifying the matters in dispute or resolving the dispute without the necessity of a hearing;

404.1(h) Upon agreement of the parties, decide the matter in dispute without hearing upon submission of written documents;

404.1(i) Order additional evaluations by the school committee or independent evaluation at public expense when necessary in order to determine the appropriate special education for the child;

404.1(j) Order written submissions by the parties;

404.1(k) Reconvene the hearing at any time prior to issuance of the decision;

404.1(l) Dismiss a hearing request when the requesting party fails to proceed to hearing within one year from the date of receipt of the hearing request;

404.1(m) Take such other steps as are appropriate to assure the orderly presentation of evidence and protection of the rights of the parties of the hearing.

404.2 The hearing officer shall have the authority to order such relief as s/he deems appropriate and consistent with Chapter 766 and the IDEA, including ordering the placement or services recommended by the school committee, the placement or services requested by the parent, either of those placements or services with modifications, or such alternative programs or services as may be required to assure the provision of a free appropriate public education to the child in the least restrictive environment.

404.3 When a hearing officer rules that a child with special needs should have received a program or service(s) which a school committee did not provide, the hearing officer may order the school committee to pay the full cost of the program or service(s) actually rendered, including, when necessary, reimbursement to the parent of such costs. Such reimbursement shall only be retroactive to the date the parents gave notice to the school committee by disputing or rejecting an inappropriate IEP, or other similar means, that the program or services offered were inappropriate, or to the date that the program or services could reasonably have been expected.

404.4 When a hearing officer has determined that a day school (502.5) or residential school (502.6) program is required for a special needs child, s/he shall specify a day or residential school program which

is approved under the Regulations for the Approval of Special Education Schools to Serve Publicly Funded Students (603 CMR 18.00), unless a waiver of those provisions is essential in order to assure the provision of a free appropriate public education for the child.

>

> 404.5 The school committee shall implement the program ordered by the hearing officer. The TEAM which completed the school evaluation shall write the IEP incorporating the decision of the hearing officer.

>

> 405.0 Bureau of Special Education Appeals: Placement of the child during proceedings; on appeal.

>

> The status of the child during the time there is a hearing before the Bureau or the Bureau's decision is on appeal to court shall be as follows:

>

> 405.1 Unless the parents and the school committee agree otherwise, during the pendency of proceedings before the Bureau, the child shall remain in his/her then current education placement, except if the child's parents are seeking initial placement in the public school, in which case the child shall be placed in the public school program. Where the parents are disputing a portion of the educational program or services offered by the school committee, those portions of the program or services not in dispute shall be implemented by the school committee pending the resolution of the proceedings.

>

> 405.2 Unless the parents and the school committee agree otherwise, during the pendency of any judicial appeal of the Bureau decision, the child shall remain in the then current educational placement, unless the child's parents are seeking initial placement in the public school, in which case the child shall be placed in the public school program. Where the Bureau has ordered the school committee to place the child in a new placement, and the parents agree with the order, the school committee shall immediately implement the placement order by the Bureau. The parents have the right to reject the decision of the bureau hearing officer and to request placement of their child in the regular public school program. If such placement is requested, the school committee shall provide the child with the regular education program, unless the school committee determines that such placement would endanger the health and safety of such child, substantially disrupt the program for other children, or deny the child a free appropriate public education, in which case the school committee shall seek enforcement of the Bureau decision in state or federal court. The court shall have the authority upon such showing to order the child placed in an appropriate educational placement.

>

> 405.3 Except as provided in 405.1 and 405.2, any party seeking to change the child's placement during the pendency of proceedings

before the Bureau or in subsequent judicial proceedings shall seek a preliminary injunction from a state or federal court of competent jurisdiction, ordering such a change in placement.

> 406.0 Bureau of Special Education Appeals: Notice of decision; appeal.

> The written findings of fact and decision of the hearing officer along with notification of the procedures to be followed with respect to appeal and enforcement of the decision shall be sent to the parents and their representatives, if any; to the representative of the child, if the child has had representation separate from the parents; and to the school committee and its legal representative, if any.

> 406.1 A copy of the Bureau decision with the child's and parent's name deleted shall be sent to the State Advisory Commission for Special Education.

> 406.2 The decision of the Bureau is final and is not subject to further agency review. Any party aggrieved by the Bureau decision may file a complaint in the Superior Court of competent jurisdiction or in federal district Court for review of the Bureau decision. Where such review is sought under the provisions of M.G.L. c.30A, §14(1), the complaint shall be filed within thirty (30) days of receipt of the final decision.

> 406.3 Except as provided in 405.0, the final decision of the Bureau shall be implemented immediately. Under M.G.L. c.30A, 514(3), appeal of the decision does not stay its effect. Rather, a party seeking to stay the decision of the Bureau shall seek a stay from the court having jurisdiction over the party's appeal.

> 407.0 Bureau of Special Education Appeals Decision: Compliance/enforcement.

> A party contending that a decision of the Bureau is not being implemented may file a complaint with the Department of Education, whose responsibility it shall be to investigate such complaint. In addition, a party may file a motion with the Bureau contending that the decision of the Bureau is not being implemented and setting out the areas of alleged non-compliance. The hearing officer may convene a hearing at which the scope of the inquiry will be limited to the facts being on the issue of compliance, facts of such a nature as to excuse performance, and facts bearing on a remedy. Upon a finding of non-compliance, the hearing officer may fashion appropriate relief, including referral of the matter to the Legal Office of the Department of Education for appropriate enforcement action.

APPENDIX B: Survey Form

National Association of State Directors of Special Education

SURVEY ON STATE DUE PROCESS PROCEDURES

State: _____ **Date:** _____

Respondent's Name: _____

Title: _____ **Phone:** _____

"1994" covers _____
"1995" covers _____
"1996" covers _____

1. Number of due process hearings *requested* during **(fiscal or calendar)** year:

   1994_____ 1995_____ 1996____

2. Number of due process hearings *held* during **(fiscal or calendar)** year:

   1994_____ 1995_____ 1996____

3. State *structure* for appeals process:

   One tier:_____ Two tier:_____ Other:_____
   (please describe)

4. Number of *appeals to the SEA* from hearing decisions during **(fiscal or calendar)** year:

   1994_____ 1995_____ 1996____

5. Number of *appeals to court* from hearing decisions during **(fiscal or calendar)** year:

   1994_____ 1995_____ 1996____

APPENDIX C: Complete Survey Data

Hearings Requested and Held in ALL States 1994-96

ALL STATES	HEARINGS REQUESTED				HEARINGS HELD			
	1994	1995	Change 1994-95	1996*	1994	1995	Change 1994-95	1996*
AL	59	81	37.3%	38	10	11	10.0%	2
AK	nd	nd	na	nd	1	2	100.0%	7
AZ	17	24	41.2%	34	3	6	100.0%	nd
AR	36	14	-61.1%	50	13	5	-61.5%	18
CA	1004	1170	16.5%	1288	50	77	54.0%	79
CO	36	24	-33.3%	23	5	4	-20.0%	3
CT	358	382	6.7%	139	96	114	18.8%	37
DE	7	10	42.9%	8	2	5	150.0%	1
FL	74	89	20.3%	54	19	17	-10.5%	7
GA	60	69	15.0%	nd	23	15	-34.8%	nd
HI	37	16	-56.8%	29	3	4	33.3%	7
ID	8	6	-25.0%	0	2	1	-50.0%	0
IL	659	477	-27.6%	nd	125	87	-30.4%	nd
IN	68	70	2.9%	34	33	22	-33.3%	2
IA	31	30	-3.2%	23	5	6	20.0%	4
KS	61	53	-13.1%	66	10	9	-10.0%	nd
KY	54	39	-27.8%	40	13	17	30.8%	17
LA	34	32	-5.9%	41	9	7	-22.2%	7
ME	64	48	-25.0%	26	19	8	-57.9%	3
MD	52	29	-44.2%	38	nd	nd	na	nd
MA	580	581	0.2%	632	40	32	-20.0%	36
MI	77	74	-3.9%	87	22	7	-68.2%	16
MN	29	33	13.8%	38	11	7	-36.4%	12
MS	23	24	4.3%	25	8	5	-37.5%	9
MO	nd	nd	na	nd	6	10	66.7%	1
MT	9	8	-11.1%	6	2	2	0.0%	0

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ALL STATES	HEARINGS REQUESTED				HEARINGS HELD			
	1994	1995	Change 1994-95	1996*	1994	1995	Change 1994-95	1996*
NE	6	12	100.0%	2	2	2	0.0%	3
NV	52	48	-7.7%	44	2	3	50.0%	2
NH	75	90	20.0%	28	14	11	-21.4%	1
NJ	693	721	4.0%	nd	266	275	3.4%	nd
NM	11	13	18.2%	20	2	2	0.0%	3
NY	nd	nd	na	nd	793	1,136	43.3%	nd
NC	35	29	-17.1%	30	9	4	-55.6%	3
ND	3	7	133.3%	2	2	5	150.0%	0
OH	54	61	13.0%	65	9	11	22.2%	11
OK	20	36	80.0%	8	7	19	171.4%	5
OR	56	54	-3.6%	61	9	5	-44.4%	16
PA	286	332	16.1%	360	82	112	36.6%	107
RI	28	43	53.6%	21	28	43	53.6%	21
SC	2	2	0.0%	2	2	2	0.0%	2
SD	9	13	44.4%	13	6	8	33.3%	2
TN	76	77	1.3%	78	22	14	-36.4%	1
TX	173	223	28.9%	450	35	33	-5.7%	50
UT	3	5	66.7%	5	1	1	0.0%	0
VT	33	42	27.3%	7	5	4	-20.0%	0
VA	102	120	17.6%	96	33	45	36.4%	22
WA	72	92	27.8%	55	47	25	-46.8%	38
WV	45	36	-20.0%	38	11	12	9.1%	6
WI	44	52	18.2%	41	2	8	300.0%	5
WY	6	6	0.0%	5	2	3	50.0%	1
TOTALS	5321	5497	3.3%	4150	1921	2263	17.8%	567

Data Source: *Survey on State Due Process Procedures* conducted by the National Association of State Directors of Special Education, June, 1996.
nd = no data submitted or available
* For most states, data for 1996 is incomplete. See explanation in text.

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Appeals Statistics for ALL States

ALL STATES	APPEALS STRUCTURE	APPEALS TO SEA			APPEALS TO COURT		
		1994	1995	1996*	1994	1995	1996*
AL	One tier	na	na	na	5	3	0
AK	Two tier	1	2	0	0	0	2
AZ	Two tier	2	2	3	0	0	0
AR	One tier	na	na	na	nd	nd	nd
CA	One tier	na	na	na	7	8	8
CO	Two tier	nd	nd	nd	nd	nd	nd
CT	One tier	na	na	na	11	14	4
DE	One tier	na	na	na	1	1	2
FL	One tier	na	na	na	nd	nd	nd
GA	One tier**	8	na	na	nd	nd	nd
HI	One tier	na	na	na	1	1	1
ID	One tier	na	na	na	0	0	0
IL	Two tier	38	31	nd	4	4	nd
IN	Two tier	15	10	0	4	0	0
IA	One tier	na	na	na	2	0	1
KS	Two tier	6	3	7	0	0	0
KY	Two tier	8	10	6	nd	nd	nd
LA	Two tier	7	1	4	1	0	1
ME	One Tier	0	1	1	0	1	0
MD	One tier**	52	29	38	nd	nd	nd
MA	One tier	na	na	na	1	6	9
MI	Two tier	11	5	12	2	2	0
MN	Two tier	10	7	8	3	5	3
MS	One tier	na	na	na	1	1	nd
MO	Two tier	2	8	1	0	5	nd
MT	One tier	na	na	na	1	0	0
NE	One tier	NA	NA	NA	0	0	0
NV	Two Tier	1	2	1	0	1	0

ALL STATES	APPEALS STRUCTURE	APPEALS TO SEA			APPEALS TO COURT		
		1994	1995	1996*	1994	1995	1996*
NH	One tier	na	na	na	nd	nd	nd
NJ	One tier	na	na	na	nd	nd	nd
NM	Two tier	1	2	2	2	2	0
NY	Two tier	43	78	nd	8	7	nd
NC	Two	1	3	1	1	2	nd
ND	One Tier	na	na	na	1	0	0
OH	Two tier	4	6	8	4	0	0
OK	Two tier	3	1	0	1	0	0
OR	One tier	na	na	na	nd	nd	nd
PA	Two tier	28	53	43	nd	nd	nd
RI	Two tier	4	9	1	1	0	0
SC	Two tier	2	2	1	0	0	1
SD	One tier	na	na	na	1	1	0
TN	One tier	na	na	na	9	7	0
TX	One tier	na	na	na	nd	nd	nd
UT	Two tier	0	1	0	0	1	0
VT	One tier	na	na	na	2	0	0
VA	Two tier	18	32	7	nd	nd	nd
WA	Two tier	72	92	55	1	2	4
WV	One tier	na	na	na	1	2	2
WI	One tier**	3	4	4	0	2	2
WY	One tier	na	na	na	1	0	0

Data Source: *Survey on State Due Process Procedures*, National Association of State Directors of Special Education, June, 1996.

Key:
* = Data for less than a full year (See explanation in text of report.)
** = Change in structure: GA became one tier on 2/14/94; MD became one tier on 7/1/96; WI became one tier on 6/25/96.
na = *not applicable* (See explanation in text of report.)
nd = *no data available* (See explanation in text of report.)

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